



## Freshfields Bruckhaus Deringer US LLP

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April 27, 2015

The Honorable Denise L. Cote  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1610

Re: *DNAML PTY, Limited v. Apple, Inc., et al.*, 13 Civ. 6516 (DLC)  
*Diesel eBooks, LLC v. Apple, Inc., et al.*, 14 Civ. 1768 (DLC)  
*Abbey House Media, Inc. v. Apple, Inc., et al.*, 14 Civ. 2000 (DLC)

Dear Judge Cote,

On behalf of the Defendants in the above-referenced matters, we respectfully request that the Court strike certain portions of DNAML's expert reports, order further discovery into the issues raised here, and grant Defendants leave to amend their expert report pending resolution of this letter. Defendants' request arises in connection with *prima facie* spoliation, including the alteration of evidence, and related authenticity concerns that have arisen with respect to core evidence relied upon in the reports of DNAML's experts. Specifically, Dr. Rosen relies on financial forecasts in DNAML\_0004402 (**4402**) for his damages estimates.<sup>1</sup> There is substantial evidence that this document, and four similar documents, were altered in November 2013 (more than two months after the commencement of this litigation), presumably to inflate DNAML's claimed injury and damages.

After receiving the Rosen and Ratliff reports, Defendants identified and promptly raised concerns regarding 4402 with DNAML's counsel by email on April 3 and in two telephonic meet-and-confers. DNAML's counsel explained that he had been advised by DNAML that 4402 was opened for roughly one and a half minutes on November 18, 2013 and inadvertently overwritten, but its content was not modified.<sup>2</sup> Defendants pressed DNAML's counsel regarding DNAML's explanation, but ultimately reached an impasse when, during the final meet-and-confer, DNAML's counsel stated that if Defendants can show spoliation, they should bring this motion.

Defendants thereafter retained a forensic expert, J. Christopher Racich of Vestigant, to investigate further. Mr. Racich's findings<sup>3</sup> are inconsistent with DNAML's explanation and suggest multiple bases on which to conclude that 4402 does not reflect revenue estimates prepared as of April/May 2010:

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<sup>1</sup> Dr. Rosen states in his damages report, and apparently has been advised by DNAML's counsel, that "the [DNAML] projections prepared as of April/May 2010 [were] the most recent iteration and the basis for this analysis[.]" Rosen Report at 5-6 (citing 4402). Dr. Ratliff relies on 4402 as the sole support for the statement: "DNAML's internal projections forecast that the vast majority of DNAML's revenue would come from eBook retailing as early as 2011." Ratliff Report at 6 (citing 4402).

<sup>2</sup> Defendants do not have access to "editing time" metadata regarding 4402 and are unable to confirm DNAML's representation with respect to the editing time. Even if 4402 were open for only 1.5 minutes the most recent time it was modified, the document could have been modified numerous times, for any duration, prior to its final save on November 18, 2013 at 10:13 pm. Counsel's explanation also does not address the four similar files, discussed below, that were modified around the same time.

<sup>3</sup> Should the Court regard it as helpful in resolving this matter, Defendants are willing to have their forensic examiner appear to be questioned by the Court and counsel for DNAML.

- The revenue forecasts in 4402 are substantially different from forecasts circulated by Adam Schmidt, DNAML's Managing Director (and former CEO), in 2010 and later, including one to DNAML's investment banker in April 2010 (DNAML\_0003283).<sup>4</sup>
- There are only five versions of DNAML budgets with revenue projections identical or similar to 4402 – but each has a “last modified” date between November 11 and November 18, 2013 (four of the five versions are last modified on November 18, 2013).
- There is no evidence of revenue forecasts similar to those in 4402 in files last modified in or around April/May 2010. All revenue forecasts in DNAML files last modified in 2010-2011 include far less optimistic projections compared to files last modified in 2013.
- Defendants have located numerous documents e-mailed by DNAML employees in 2011 and 2012 that contain the forecasts at issue here (*See, e.g.*, DNAML\_0005387, DNAML\_0005404). Each of these documents contains the same significantly lower revenue projections as in DNAML\_0003283, the document circulated to DNAML's investment banker in April 2010. *None* contains the projections from 4402.
- As Mr. Racich indicates in his declaration, the metadata and names of the four budget files last saved on November 18, 2013 demonstrate that they were modified *iteratively* in November 2013, ending with 4402.<sup>5</sup> The finality and completeness implied by the file names of the four files last modified on November 18, 2013 correlates with the time at which each document was last modified. The file last modified at 2:00 am bears the title “DNAML Budget 2009-2011\_April 2009;” the version saved at 8:49 pm is titled “DNAML Budget 2009-2011\_final;” 23 minutes later, the version saved at 9:12 pm is titled “DNAML Budget 2009-2011\_final1;” and the ultimate version, 4402, saved at 10:13 pm, has filename “DNAML Budget 2009-2011\_Full\_Final.”

On April 23, Defendants provided DNAML's counsel with more detail regarding their findings, informed them of Defendants' intent to file this motion, and stated that DNAML's counsel could call if they learned new information about this issue. They have not done so.

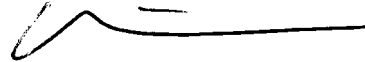
Defendants respectfully request that the Court: (1) strike the portions of DNAML's expert reports that rely upon 4402; (2) order further discovery into spoliation, including document alteration related to at least the documents cited in this motion and a forensic audit of relevant DNAML computers and IT infrastructure; and (3) allow leave for Defendants' expert to amend his report following resolution of this issue. Plaintiffs' experts should not be allowed to rely upon a document that, on its face, was modified during the pendency of this litigation.

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<sup>4</sup> For the time periods for which both 4402 and DNAML\_0003283 provide forecasts, such forecasts do not match. Moreover, 4402 forecasts eBooks revenue through the end of calendar year 2011, while DNAML\_0003283 includes forecasts for eBooks revenue through only March 2011. This discrepancy is particularly important for Dr. Rosen's damages estimate because 4402 forecasts <sup>REDACTED</sup> greater eBook revenue in 2011 than in 2010 – from <sup>REDACTED</sup> to <sup>REDACTED</sup> – a significant year-over-year change over a time period for most of which DNAML\_0003283 does not include projections.

<sup>5</sup> The Appendix demonstrates that each subsequent version (with a later modified date) reflects cumulative changes from all earlier versions (with an earlier modified date).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michael Lacovara', with a long horizontal stroke extending to the right.

Michael Lacovara

(Enclosure)

APPENDIX: DNAML BUDGET PROJECTION COMPARISONS

We have identified five versions of DNAML’s budget projections – including DNAML\_0004402 (**4402**), a document relied upon by DNAML’s experts – that have a last modified date in November 2013. The earliest version (last-modified date November 11, 2013) has file name “DNAML Budget 2009-2011,”<sup>1</sup> and the final version (last-modified on November 18, 2013 at 10:13 pm) has file name “DNAML Budget 2009-2011\_Full\_Final.”<sup>2</sup> It is this final version that is 4402. The values and formulas in the four files modified before 4402 demonstrate that they are most likely earlier versions of 4402. In particular, it is clear that on November 18, 2013, these forecasts underwent iterative revisions culminating in 4402. Such changes resulted in thousands of “calculated value” changes in the budget projections because each critical input that was modified affected numerous linked formulas and results.

Table A, below, surveys the calculated values of particularly relevant projections: total eBook Direct Sales, total eBook revenue, total income, and total operating profit after tax. It shows such projections for DNAML\_0003283, the projection sent in 2010 from Adam Schmidt to DNAML’s investment banker,<sup>3</sup> and the five versions of DNAML’s budget projections last modified in 2013.

TABLE A. CHANGES IN PROJECTIONS

Title		DNAML Cash Flow Projection march 2010	DNAML Budget 2009-2011	DNAML Budget 2009- 2011_April 2009	DNAML Budget 2009-2011_final	DNAML Budget 2009-2011_final1	DNAML Budget 2009-2011_Full_Final
Date Modified		April 22, 2010 2:17 am	November 11, 2013, 3:04 am	November 18, 2013 2:00 am	November 18, 2013 8:49 pm	November 18, 2013 9:12 pm	November 18, 2013 10:13 pm
Document Nos.		DNAML_0003283	DNAML_0004399 DNAML_0025699 DNAML_0025700 DNAML_0025834 DNAML_0025835	DNAML_0025701 DNAML_0025836	DNAML_0025697 DNAML_0025832	DNAML_0025698 DNAML_0025833	DNAML_0004402 DNAML_0025696 DNAML_0025831
Trade eBook Direct Sales (\$)	2010 <sup>4</sup> 2011 <sup>5</sup>	REDACTED Not forecasted	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
eBook Revenue	2010 <sup>6</sup> 2011 <sup>7</sup>	REDACTED Not forecasted					
Total Income	2010 <sup>8</sup> 2011 <sup>9</sup>	Not forecasted Not forecasted					
Operating Profit [After] Tax <sup>10</sup>	2010 <sup>11</sup> 2011 <sup>12</sup>	Not forecasted Not forecasted					

Table B, below, compares each successive versions (8:49 pm, 9:12 pm and 10:13 pm) modified over the course November 18, 2013 with “DNAML Budget 2009-2011\_April 2009,”<sup>13</sup> the first version saved on that date (2:00 am). It demonstrates that each subsequent file (with a later modified time) reflects cumulative changes from the earlier files. The final file in this succession, “DNAML Budget 2009-2011\_Full\_Final,” is the projection relied upon to DNAML’s experts, 4402.

**TABLE B. DNAML BUDGET PROJECTIONS MODIFIED OVER THE COURSE OF NOVEMBER 18, 2013**

DNAML Budget 2009-2011_final November 18, 2013, 8:49 pm DNAML_0025697; DNAML_0025832	DNAML Budget 2009-2011_final1 November 18, 2013, 9:12 pm DNAML_0025698; DNAML_0025833	DNAML Budget 2009-2011_Full_Final November 18, 2013, 10:13 pm DNAML_0004402; DNAML_0025696; DNAML_0025831
<i>Payment Gateway eBook Sales</i> to 5 <sup>th</sup> tab	<i>Payment Gateway eBook Sales</i> to 5 <sup>th</sup> tab	<i>Payment Gateway eBook Sales</i> to second tab
Discount factor for 2010 trade / education eBooks from REDACTED <sup>14</sup> to	Discount factor for 2010 trade / education eBooks from REDACTED <sup>14</sup> to	Discount factor for 2010 trade / education eBooks from REDACTED <sup>14</sup> to
<i>eBook Sales DNL DRM</i> to sixth tab	<i>eBook Sales DNL DRM</i> to sixth tab	<i>eBook Sales DNL DRM</i> to first tab
Deleted text “Adam add a expenditure/resource allocation plan to the budget scenarios per each sector - REDACTED” <sup>15</sup>	Deleted text “Adam add a expenditure/resource allocation plan to the budget scenarios per each sector - REDACTED”	Deleted text “Adam add a expenditure/resource allocation plan to the budget scenarios per each sector - REDACTED”
Row heading “Price Per eBook” to “Listed Price Per eBook” <sup>16</sup>	Row heading “Price Per eBook” to “Listed Price Per eBook”	“Price Per eBook” to “Listed Price Per eBook less Average Discount Per eBook” <sup>17</sup>
Deleted REDACTED <sup>18</sup> “Publisher royalties Direct”	Deleted REDACTED <sup>18</sup> “Publisher royalties Direct”	Deleted REDACTED <sup>18</sup> “Publisher royalties Direct”
Added rows with headings including: <sup>19</sup> “% of royalties from Trade Publisher less discount percentage”; “% Discount on Trade Publisher Titles”; and “Net % of royalties from Trade Publisher less discount percentage”	Added rows with headings including: “% of royalties from Trade Publisher less discount percentage”; “% Discount on Trade Publisher Titles”; and “Net % of royalties from Trade Publisher less discount percentage”	Added rows with headings including: <sup>20</sup> “% of royalties from Trade Publisher less discount percentage”; “Average Discount Per eBook % Discount on Trade Publisher Titles”; and “Net % of royalties from Trade Publisher less discount percentage”
Formula to calculate “Total \$ Revenue/Period/Distribution Channel,” uses “Net % of royalties from [publisher type] less discount percentage” instead of REDACTED <sup>21</sup> “Publisher royalties Direct”	Formula to calculate “Total \$ Revenue/Period/Distribution Channel,” uses “Net % of royalties from [publisher type] less discount percentage” instead of REDACTED <sup>21</sup> “Publisher royalties Direct”	Formula to calculate “Total DNAML \$ Revenue/Period/Distribution Channel,” uses “Net % of royalties from [publisher type] less discount percentage” instead of REDACTED <sup>21</sup> “Publisher royalties Direct”
	Added row “% of sales increase based on discount” <sup>22</sup>	Added row “% of sales increase based on Discount as per sales increase formulae” <sup>23</sup>
	Added “% of sales increase based on discount” with formula: REDACTED. Under that formula, a REDACTED discount increases sales by REDACTED <sup>24</sup>	Added “% of sales increase based on discount” with formula: REDACTED. Under that formula, a 20% / 10% discount increases sales by REDACTED <sup>25</sup>
	Increased quantity-sold by “% of sales increase based on discount” <sup>26</sup>	Increased quantity-sold by “% of sales increase based on discount”
	Added unmarked calculations <sup>27</sup>	N/A
		Removed “Total \$ Sales per Half Year” content <sup>28</sup> Added “Sales increase formula” with the assumption “Every REDACTED <sup>29</sup> discount upto [sic] REDACTED increases sales by REDACTED” Changed price formulas under “Listed Price Per eBook less Average Discount Per eBook” to account for average discount <sup>30</sup>

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<sup>1</sup> Attachment to DNAML\_0004399; DNAML\_0025699; DNAML\_0025700; DNAML\_0025834; DNAML\_0025835.

<sup>2</sup> Attachment to DNAML\_0004402; DNAML\_0025696; DNAML\_0025831.

<sup>3</sup> Substantially similar projections were circulated into 2012. *See* DNAML\_0005404 (Nov. 24, 2011 email from Adam Schmidt to Justus Veeneklass with attachment “DNAML Cash Flow Projection Estimates Oct v2.xlsx”); DNAML\_0005387 (Feb. 9, 2012 email from Adam Schmidt to robert.spano@alleasing.com.au with attachment “DNAML Cash Flow Projection 12 months Jan 2012 V1.xlsx”).

<sup>4</sup> “Payment Gateway eBook Sales” Tab, Cell BC10 (last-modified 2010 forecast)/AP20 (last-modified 2013 forecasts).

<sup>5</sup> “Payment Gateway eBook Sales” Tab, Cell BC10 (last-modified 2013 forecasts).

<sup>6</sup> “Payment Gateway eBook Sales” Tab, Cell BC20 (last-modified 2010 forecast)/AP20 (last-modified 2013 forecasts).

<sup>7</sup> “Payment Gateway eBook Sales” Tab, Cell BC20 (last-modified 2013 forecasts).

<sup>8</sup> “Income Projections” Tab, Cell P74 + Cell X74 (last-modified 2013 forecasts).

<sup>9</sup> “Income Projections” Tab, Cell AE74 + Cell AM74 (last-modified 2013 forecasts).

<sup>10</sup> Both rows 78 and 82 in the “Income Projections” tab of the forecasts last modified in 2013 are labeled “Operating Profit Before Tax.” However, row 82 is equal to row 78 less “Company Tax” (row 80). It is clear that row 82 is meant to reflect operating profit after tax. The forecast last modified in 2010 projects “Operating Profit After Tax” in row 80 the “Income Projections” tab, but does cover calendar years 2010 and 2011.

<sup>11</sup> “Income Projections” Tab, Cell P82 + Cell X82 (last-modified 2013 forecasts).

<sup>12</sup> “Income Projections” Tab, Cell AE82 + Cell AM82 (last-modified 2013 forecasts).

<sup>13</sup> DNAML\_0025701; DNAML\_0025836.

<sup>14</sup> “Payment Gateway eBook Sales” Tab, Cells I10, I11, I13, I14, I16, I17, M10, M11, M12, M13, M14, M16, and M 17.

<sup>15</sup> “eBook Sales DNL DRM” Tab, Cell B3.

<sup>16</sup> “eBook Sales DNL DRM” Tab, Cell A31,

<sup>17</sup> “eBook Sales DNL DRM” Tab, Cell A31,

<sup>18</sup> “eBook Sales DNL DRM” Tab, Cells A67-C67.

<sup>19</sup> “eBook Sales DNL DRM” Tab, Cells A67-77.

<sup>20</sup> “eBook Sales DNL DRM” Tab, Cells A67-77.

<sup>21</sup> “eBook Sales DNL DRM” Tab, Formulas in Cells C51-53:Q51-53.

<sup>22</sup> “eBook Sales DNL DRM” Tab, Row 48.

<sup>23</sup> “eBook Sales DNL DRM” Tab, Cell A48.

<sup>24</sup> “eBook Sales DNL DRM” Tab, Cells C48-Q48.

<sup>25</sup> “eBook Sales DNL DRM” Tab, Cells C48-Q48.

<sup>26</sup> “eBook Sales DNL DRM” Tab, Cells C45-47:Q45-47.

<sup>27</sup> “eBook Sales DNL DRM” Tab, Columns V-Y.

<sup>28</sup> “eBook Sales DNL DRM” Tab, Rows 37-42.

<sup>29</sup> “eBook Sales DNL DRM” Tab, Rows 104-111.

<sup>30</sup> “eBook Sales DNL DRM” Tab, Rows 32-34.

Defendants.

Civil Action No. 14 Civ. 2000(DLC)

Defendants.

Civil Action No. 14 Civ. 1768(DLC)

Defendants.

Civil Action No. 13 Civ. 6516(DLC)

## DECLARATION OF J. CHRISTOPHER RACICH

I, J. Christopher Racich, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following information is true and correct:

1. I am the President of Vestigant. Vestigant is a technology and computer forensic consulting firm that assists clients with fact-finding in litigation, regulatory reviews, and business decisions. I founded Vestigant in 2009 and, since that time, Vestigant has been retained in hundreds of Computer Forensic and E-Discovery matters. Prior to founding Vestigant, I headed the forensic computer practice at CoreFacts (and, after a merger, First Advantage) for eight years and was a director of high tech investigations at Kroll & Associates for four years.

2. I am a 1993 graduate of Cornell University where I received my Bachelor of Arts degree (Biology). I later attended law school at the Washington College of Law at American University, graduating with a Juris Doctor in 1997. I remain an attorney and active member in good standing licensed to practice law in the State of New York and the District of Columbia.

3. I have taken numerous courses and attended multiple seminars in the field of computer forensics over the past 16 years. I have taught computer forensics courses at the High Tech Crimes Investigation Association (HTCIA). I am also an adjunct Professor of Law at the Washington College of Law at American University, where I teach an electronic discovery course.

4. During my career in the computer forensics field, I have provided testimony as an expert in computer forensics in numerous courts, including the United States District Court for the Eastern District of Virginia, the United States District Court for the Southern District of Florida, the United States District Court for the Southern District of Texas, the Superior Court for the District of Columbia, the Missouri Circuit Court, the Supreme Court of the State of New York, County of New York, the Larimer County District Court in Colorado, and the



Pennsylvania Court of Common Pleas, as well as before the National Labor Relations Board. I have also provided expert deposition testimony and affidavits similar to this one in the area of computer forensics in connection with numerous civil claims. I have been qualified at least 28 times as an expert in computer forensics in a court of law or arbitration proceeding. A copy of my Curriculum Vitae, attached as Exhibit A, provides further information about my expertise and background, including the matters and venues in which I have testified.

5. In order to conduct my analysis in the above captioned matters, I signed a copy of the Protective Order in these cases and was provided with the documents listed in Table 1 below by Defendants' counsel. I understand from Defendants' counsel that these documents had previously been produced to Defendants by Plaintiff DNAML.

6. It is my understanding that two of these documents are cited in reports of DNAML's two economic experts. Dr. Michael Rosen cites DNAML\_0004399, while both Drs. Rosen and James Ratliff rely upon DNAML\_0004402. I understand that Dr. Rosen states in his damages report, and apparently has been advised by counsel for DNAML, that DNAML\_0004402 was "prepared as of April/May 2010" and was "the most recent iteration" of DNAML's projections.

7. Based on my forensic analysis of the documents and their metadata, the dates in Table 1 below reflect the last modified date for each of the documents I examined. These dates represent the last time each document was saved using Microsoft Excel. As their metadata indicates, both DNAML\_0004399 and DNAML\_0004402 were last modified in November of 2013. DNAML\_00040399 is an e-mail sent by Adam Schmidt to JuSung Kim on November 18, 2013. One of its attachments produced in native format, "DNAML Budget 2009-2011," was last modified at 3:04 am on November 11, 2013.

8. DNAML\_0004402 is an e-mail sent by Adam Schmidt to JuSung Kim on November 19, 2013. Its attachment produced in native format, "DNAML Budget 2009-2011\_Full\_Final.xls," was last modified at 10:13 pm on November 18, 2013.

9. Based upon my review of the content of the files and the metadata, the native spreadsheets attached to DNAML\_0004399 and DNAML\_0004402 appear to be iterations of the same document. In between these two iterations, at least three other iterations appear to exist in DNAML's production, and each of these was modified on November 18, 2013.


10. There are hundreds, if not thousands, of changes to values, formulas, and formatting of these spreadsheets from November 2013. As part of my analysis, I used a file comparison tool to identify all differences between these November 2013 forecasts in order of last-modified date and recorded those comparisons in Exhibits 2–4 as indicated in Table 2.

11. Comparison of Exhibits 2–4, summarized in the Appendix, illustrates that specific changes made in earlier-saved versions of the file also appear in later-saved versions of the file. Based upon my forensic analysis and experience as a forensic investigator, it is highly likely that the explanation for this continuity is that the later-saved versions were modifications of the earlier-saved versions of the file.

12. Based on my forensic analysis, I do not believe that DNAML\_0004399 and DNAML\_0004402 were "prepared as of April/May 2010." Rather, these documents and the iterations in between appear to have been substantively modified in November 2013.

Dated: Vienna, Virginia

April 26, 2015

By: \_\_\_\_\_

J. Christopher Racich



**TABLE 1**

Document	Description/Title	Last Modified	
		Date	Time
DNAML_0003283	E-mail from Adam Schmidt to Menno Veeneklaas on April 22, 2010 with attachment "DNAML Cash Flow Projection march 2010."	April 22, 2010	5:16 AM
<b>DNAML_0004399</b>	E-mail from Adam Schmidt to JuSung Kim on November 18, 2013 with attachment "DNAML Budget 2009-2011."	November 11, 2013	3:04 AM
<b>DNAML_0004402</b>	E-mail from Adam Schmidt to JuSung Kim on November 19, 2013 with attachment "DNAML Budget 2009-2011_Full_Final."	November 18, 2013	10:13 PM
DNAML_0005387	E-mail from Adam Schmidt to Robert Spano with attachment "DNAML Cash Flow Projection 12 months Jan 2012 V1.xlsx"	January 23, 2012	5:50 PM
DNAML_0005404	E-mail from Adam Schmidt to Justus Veeneklaas on November 24, 2011 with attachment "DNAML Cash Flow Projection Estimates Oct v2.xlsx"	November 23, 2011	10:31 PM
DNAML_0025696	Spreadsheet: "DNAML Budget 2009-2011_Full_Final."	November 18, 2013	10:13 PM
DNAML_0025697	Spreadsheet: "DNAML Budget 2009-2011_final."	November 18, 2013	8:49 PM
DNAML_0025698	Spreadsheet: "DNAML Budget 2009-2011_final1."	November 18, 2013	9:12 PM
DNAML_0025699	Spreadsheet: "DNAML Budget 2009-2011."	November 11, 2013	3:04 AM
DNAML_0025700	Spreadsheet: "DNAML Budget 2009-2011."	November 11, 2013	3:04 AM
DNAML_0025701	Spreadsheet: "DNAML Budget 2009-2011_April 2009."	November 18, 2013	2:00 AM
DNAML_0025831	Spreadsheet: "DNAML Budget 2009-2011_Full_Final."	November 18, 2013	10:13 PM
DNAML_0025832	Spreadsheet: "DNAML Budget 2009-2011_final."	November 18, 2013	8:49 PM
DNAML_0025833	Spreadsheet: "DNAML Budget 2009-2011_final1."	November 18, 2013	9:12 PM
DNAML_0025834	Spreadsheet: "DNAML Budget 2009-2011."	November 11, 2013	3:04 AM
DNAML_0025835	Spreadsheet: "DNAML Budget 2009-2011."	November 11, 2013	3:04 AM
DNAML_0025836	Spreadsheet: "DNAML Budget 2009-2011_April 2009."	November 18, 2013	2:00 AM

**Table 2**

File 1 Name	File 2 Name	Comparison File
DNAML Budget 2009-2011_April 2009 (DNAML_0025701)	DNAML Budget 2009-2011_final (DNAML_0025697)	Exhibit 2 X DNAML_0025701 to DNAML_0025697.xlsx
DNAML Budget 2009-2011_April 2009 (DNAML_0025701)	DNAML Budget 2009-2011_final1 (DNAML_0025698)	Exhibit 3 X DNAML_0025701 to DNAML_0025698.xlsx
DNAML Budget 2009-2011_April 2009 (DNAML_0025701)	DNAML Budget 2009-2011_Full_Final (DNAML_0025696)	Exhibit 4 X DNAML_0025701 to DNAML_0025696.xlsx



## **Curriculum Vitae**

**J. Christopher Racich, Vestigant, LLC, President**

**Name:** J. Christopher Racich  
**Telephone:** 202 905-2170  
**Email:** racich@vestigant.com

## **PROFESSIONAL EXPERIENCE**

### **Sept. 2009 – Present: Vestigant, LLC – President**

Create and operate computer forensics/E-Discovery Consulting business

Lead, work and testify in all manner of Computer Forensics/E-Discovery cases

Gather and investigation of data for a variety of civil and criminal matters. Matters include fraud, embezzlement, sexual harassment, intellectual property theft violation of non-compete clauses, child pornography, and computer, network, and PBX/voice mail hacking

Aug. 2010 – Present: American University, Washington College of Law – Adjunct Professor

Teaching “Litigation in the Digital Age: E-discovery and Electronically Stored Information Law”

### **Dec. 2008 to Sept. 2009: First Advantage – Senior Regional Practice Leader and Counsel**

### **2006 to 2008: First Advantage – Senior VP and Counsel**

### **2004 to 2006: First Advantage CoreFacts Managing Director and Counsel**

### **2001 to 2004: CoreFacts Managing Director and Counsel**

Head computer forensics practice

Lead numerous large scale electronic discovery consulting projects and act as lead consulting expert

Lead work and testify in all manner of Computer Forensics/E-Discovery cases

### **1997 to 2001: Kroll Associates – Director, High Tech Investigation, Mid-Atlantic Region**

Develop and lead the firm’s Mid-Atlantic high tech investigation practice from Kroll’s Washington, DC office

Manage numerous investigations and computer forensic engagements for the firm

Testify as a computer forensic expert

## **TESTIMONY**

### **Taylor Allegyer vs. Melanie Allegyer**

Case No. CL 2014-4514

Testimony given at Hearing, Fairfax County Circuit Court, VA, Retained by Taylor Allegyer.

Counsel: John Byrnes, Kelly, Byrnes & Danker, PLLC

### **HMS Holdings Corp., et al., v. Sean Curtin, et al.**

Index No. A00754/2014

Testimony given at Evidentiary Hearing, Supreme Court New York Retained by HMS Holdings, Corp.

Counsel, Christopher Cox, Weil Gotschal & Manges, LLP

### **James Swan v. BB&T Securities, LLC**

FINRA Arbitration No. 13-01078

Testimony given at FINRA Arbitration, Retained by BB&T Securities, LLC

Counsel: Thomas McGonigle, Murphy & McGonigle, PC

### **HMS Holdings Corp. et al., v. Public Consulting Group, Inc., et al**

Cause No. DC-14-0947

Testimony given in TI Hearing, Dallas County District Court, TX, Retained by HMS Holdings, Corp.

Counsel: Salvatore Romanello, Weil Gotschal & Manges, LLP

### **HMS Holdings Corp. et al., v. Public Consulting Group, Inc., et al**

Cause No. DC-14-0947

Testimony given in Deposition, Dallas County District Court, TX, Retained by HMS Holdings, Corp.

Counsel: Salvatore Romanello, Weil Gotschal & Manges, LLP

### **Taylor Allegyer vs. Melanie Allegyer**

Case No. CL 2014-4514

Testimony given at Hearing, Fairfax County Circuit Court, VA, Retained by Taylor Allegyer.

Counsel: John Byrnes, Kelly, Byrnes & Danker, PLLC

### **American International Biotechnology, LLC v. Breedlove**

Case No. 3:14-cv-229

Testimony given at Hearing, Federal District Court EDVA, Retained by American International Biotechnology, LLC

Counsel: Stephanie Karn, Goodman Allen & Filetti, PLLC

**Janae Haaland vs. Christopher Marraro**

Case No. CL 2014-289

Testimony given at Deposition, Fairfax County Circuit Court, VA, Retained by Janae Haaland.

Counsel: Maureen Danker, Kelly, Byrnes & Danker, PLLC

**ManTech International Corp. v. Analex Corp., et al.**

Case No. 2011-9058

Testimony given at Trial, Fairfax County Circuit Court, VA, Retained by ManTech International Corp.

Counsel: Daniel Westman, Morrison & Foerster

**US Foods, Inc., v. Michael Noble & Phillip Roszak**

AAA Case No. 13 166 01022 13

Testimony given in AAA Hearing, Retained US Foods, Inc.

Counsel: Connie Bertram, Proskauer Rose, LLP

**Wise Recycling, LLC v. Gary Taylor, et al.**

Case No. 12-CVS-2139

Testimony given in Deposition Superior Court of North Carolina, Johnston County, Retained by Wise Recycling, LLC

Counsel: William Miossi, Winston & Strawn, LLP

**Tullett Prebon, PLC, et al. v. BGC Partners, Inc.**

Civil Action No. HUD-L-3796-11

Testimony given in Deposition, Superior Court of New Jersey, Hudson County, Retained by John DelVecchio and Peter Ozzimo

Counsel: Tim Callahan, Saul Ewing, LLP

**Random Ventures, Inc., et al. v. Advanced Armament Corp, LLC et al**

Civil Action 1:12-CV-06792-KBF

Testimony given at Trial, Federal District Court SDNY, Retained by Advanced Armament Corp, LLC

Counsel: Dana Rust, McGuireWoods, LLC

**Professional Massage Training Center, Inc. v. Accreditation Alliance of Career Schools and Colleges**

Civil Action No. 1:12-CV-00911-LO-IDD

Testimony given at Evidentiary Hearing, Federal District Court EDVA, Retained by Professional Massage Training Center, Inc.

Counsel: Ronald L. Holt, Dunn & Davison, LLC

**Jennifer J. Taylor v. Republic Services, Inc., et al.**

Civil Action No. 1:12-CV-523

Testimony given at Evidentiary Hearing, Federal District Court EDVA, Retained by Republic Services, Inc.

Counsel: Raymond Baldwin, Seyfarth Shaw, LLP

**Tech Systems, Inc. v. Lovelen Pyles, et al.**

Case No. 1:12-CV-374-GBL-JFA

Testimony given at Trial, Federal District Court EDVA, Retained by Tech Systems, Inc.

Counsel: Eric Crusius, The Centre Law Group

**Motors Liquidation Company GUC Trust, v. Appaloosa Investment Ltd. Partnership I, et al.**

Case No. 09-50026, Case No. 12-09802

Testimony given at Trial, SDNY Bankruptcy Court, Retained by Elliott Management Corporation, Fortress Investment Group LLC and Morgan Stanley & Co. International PLC

Counsel: Kevin D. Finger, Greenberg Traurig, LLP

**Confidential Arbitration**

Testimony given in Confidential Arbitration.

Counsel: Christopher Manning, Williams & Connolly, LLP

**ManTech International Corp. v. Analex Corp., et al.**

Case No. 2011-9058

Testimony given in Deposition, Fairfax County Circuit Court, VA, Retained by ManTech International Corp.

Counsel: Daniel Westman, Morrison & Foerster

**Motors Liquidation Company GUC Trust, v. Appaloosa Investment Ltd. Partnership I, et al.**

Case No. 09-50026, Case No. 12-09802

Testimony given in Deposition, SDNY Bankruptcy Court, Retained by Elliott Management Corporation, Fortress Investment Group LLC and Morgan Stanley & Co. International PLC

Counsel: Kevin D. Finger, Greenbert Traurig, LLP



**Tristi Ann Boone v. Dinh Tran Quang Nguyen**

Case No. CL00069833-00

Testimony given at Hearing, Loudon County Circuit Court, VA, Retained by Tristi Boone

Counsel: John Byrnes, Kelly Byrnes & Danker, PLLC

**Aon Risk Services Northeast, Inc. And Aon Corp. v. M. Cusack and Alliant Insurance Services, Inc.**

Index No. 651673/2011

Testimony given in Preliminary Injunction Hearing, Supreme Court of the State of New York, Retained by Alliant Insurance Services, Inc.

Counsel: Michelle Hartmann, Weil, Gotshal & Manges

**DynCorp International, LLC v. Jane T. Flowers, et al.**

Case No. CL2011-8117

Testimony given in Deposition, Fairfax County Circuit Court, VA, Retained by DynCorp, International, LLC

Counsel: David Greenspan, McGuireWoods, LLP

**ManTech International Corp. v. Barry Greenberg, et al.**

Case No. 2008-5845

Testimony given in trial, Fairfax County Circuit Court, VA, Retained by ManTech International Corp.

Counsel: Daniel Westman, Morrison & Foerster

**Energy EIAC Capital Ltd and Sanibel Intertrade Corp. v. Maxim Group, LLC**

Index No. 650180/2010

Testimony given in hearing, Supreme Court of the State of New York, Retained by Energy EIAC Capital Ltd.

Counsel: Adam Safer, Miller & Wrubel

**ManTech International Corp. v. Barry Greenberg, et al.**

Case No. 2008-5845

Testimony given in Deposition, Fairfax County Circuit Court, VA, Retained by ManTech International Corp.

Counsel: Daniel Westman, Morrison & Foerster,

**Lumber Liquidators, Inc. v. Kevin H. Sullivan**

Case No. 11 166 00490 10

Testimony given in American Arbitration Association Arbitration, Retained by Lumber Liquidators, Inc.

Counsel: Patrick Hanes, Williams Mullen

**James River Management Co., Inc., et al v. Michael P. Kehoe, et al.**

Civil Action No. 3:09CV387-REP

Testimony given in hearing, Federal District Court EDVA, Retained by James River Management, Inc.

Counsel: Steve Davidson, Steptoe & Johnson, LLP

**Leor Exploration & Production, LLC et al., v. Guma Aguiar**

Case No. 09-60136-CV-PAS; Case No. 09-60683-CV-PAS

Testimony given in Evidentiary Hearing, SDFL, Retained by Guma Aguiar

Counsel: Thomas Wiegand, Winston & Strawn

**James River Management Co., Inc., et al v. Michael P. Kehoe, et al.**

Civil Action No. 3:09CV387-REP

Testimony given in Deposition, Federal District Court EDVA, Retained by James River Management, Inc.

Counsel: Steve Davidson, Steptoe & Johnson, LLP

**Applied Materials, inc., v. Advanced Micro-Fabrication Equipment, Inc. China, et. al.**

Case No. C07-05248

Testimony given in Deposition, NDCA, San Jose Division, Retained by Applied Materials

Counsel: Tom Fitzpatrick, Goodwin Proctor, LLP

**John B. Mazur v. TRG Holdings LLC., et al.**

Civil Action No. 08 CA 000809

Testimony given in Evidentiary Hearing, Superior Court of the District of Columbia, Retained by John B. Mazur

Counsel: Jim Campbell, Campbell, Miller, Zimmerman

**John B. Mazur v. TRG Holdings LLC., et al.**

Civil Action No. 08 CA 000809

Testimony given in Deposition, Superior Court of the DC, Retained by John B. Mazur

Counsel: Jim Campbell, Campbell, Miller, Zimmerman

**Sterling Merchandising, Inc. v. Nestlé, S.A. et al.**

Civil No. 06-1015 (SEC)

Testimony given in Deposition, District Court, Puerto Rico. Retained by Nestlé, S.A.

Counsel: Erik Koons, Howrey

**Interbake Foods, LLC v. Bakery, Confectionery, Tobacco Workers and Grain Millers International Union (BCTGM), Local 68**

NLRB Case #5CA-33158, 5CA-33300, 5CA-34261

Testimony given in Trial, National Labor Relations Board, Region 5. Retained by Interbake Foods, LLC.

Counsel: Mark Keenan, McGuireWoods, LLP

**David W. Howard v. Lumber Liquidators, Inc.**

JAMS Arbitration Ref. No. 1410004567

Testimony given in JAMS Arbitration. Retained by Lumber Liquidators, Inc.

Counsel: John Barr, McGuireWoods, LLP

**Bi-State Development Agency of the Missouri-Illinois Metropolitan District v. Cross County Collaborative Joint Venture, et. al.**

Case #04CC-003335

Testimony given in Trial, Circuit Court, St. Louis, MO. Retained by: Bi-State Development Agency of the Missouri-Illinois Metropolitan District.

Counsel: Ralph Altmann, Rabbitt, Pitzer & Snodgrass, P.C.

**Jerry I. Treppel v. Biovail Corporation, Eugene N. Melnyk, Kenneth C. Cancellara, Michael S. Sitrick and Sitrick and Company, Inc.**

Case 03 Civ. 3002

Testimony given in 30(b)(6) Deposition, SDNY. Retained by Biovail Corporation

Counsel: Neil Steiner, Deckert, LLP

**American Civil Liberties Union, et al v. Alberto Gonzales**

Case #98-CV-5591

Testimony given in Deposition, EDPA. Retained by American Civil Liberties Union

Counsel: Elan Dobbs, Latham & Watkins

**DAG Petroleum Suppliers, LLC v. BP p.l.c. and BP Products North America, Inc.**

Case #1:05-CV-1323

Testimony given in Deposition, Federal District Court EDVA. Retained by DAG Petroleum Suppliers, LLC

Counsel: Christopher Ohly, Blank Rome

**IECS, LLC v. Abdallah Walid El Kabbani**

Case #1:06CV90

Testimony given in Hearing, Federal District Court, EDVA. Retained by IECS

Counsel: Shanlo Wu

**United States v. Daniel Bayly, et al.**

Case #4:04CR00363-1

Testimony given in Trial, Federal District Court, SDTX. Retained by US Government

Counsel: John Hammon

**Hach Company v. Michelle Haubrich**

Case #04CV1639

Testimony given in Hearing, Larimer County District Court, CO. Retained by Hach Company

Counsel: Pat Pilachowski, Shaw & Rosenthal

**Scott & Stringfellow v. Jefferies Group, Inc**

Testimony and Evidence given in Hearings, NASD-DR Arbitration, and in Henrico VA, Circuit Court. Retained by Scott & Stringfellow

Counsel: John Barr, McGuireWoods, LLP

**Walton Street v. Ocwen Asset Investment Corp.**

Case # 1999L006116

Evidence given in Deposition, Cook, IL, Circuit Court. Retained by Ocwen Asset Investment Corp

Counsel: Joel Miller, Miller & Wrubel

**Henry N. Camferdam, Jr. et al. v. Ernst & Young International, Inc. et al.**

Case #1:02CV10100

Testimony given in Hearing, Federal District Court, SDNY. Retained by Ernst & Young International, Inc., et al

Counsel: Emmet Flood, Williams & Connolly, LLP

**DMG Securities v. Bashion, Cruz**

Case #03-06845

Testimony given in Hearing, NASD-DR Arbitration. Retained by DMG Securities

Counsel: John Barr, McGuireWoods, LLP

**CERTIFICATION AND TRAINING**

Certified Computer Examiner (CCE)

Member New York Bar Association, 1998 – present

Member Washington, DC Bar, 1999 – present

Member Virginia Bar Association, 2004 – 2009

Board of Directors, Institute of Computer Forensic Professionals

HTCIA Computer Forensic Certification

HTCIA Instructor

Encase Intermediate Certification

National Consortium for Justice Information and Statistics (SEARCH) Computer Forensic Certification

HTCIA/RCFG GMU Computer Forensic Certification

Kroll Computer Forensics Certification

Co-Chair, ABA Sub-committee on Electronic Evidence, 1999 – 2004

Private Investigator Virginia – 2002 - Present

Private Detective, Washington, DC, 1997 – 2001

## **EDUCATION**

**Washington College of Law, 1997**

JD

**Cornell University, 1993**

Bachelor of Arts, Biology